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**FILED**

MAR - 5 1992

HOWARD HANSON  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF MARIN

11 CHURCH OF SCIENTOLOGY )  
INTERNATIONAL, a California )  
12 not-for-profit religious )  
corporation; )

13 Plaintiffs, )

14 vs. )

15 GERALD ARMSTRONG; DOES 1 )  
16 through 25, inclusive, )

17 Defendants. )

No. 152 229

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS OR STAY  
OR TRANSFER TO LOS ANGELES  
SUPERIOR COURT

Date: March 20, 1992  
Time: 9:00 a.m.  
Dept: Four (4)  
Trial/Arbitration: None

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Dept: Four (4)  
Trial/Arbitration: None

19 INTRODUCTION

20 When Gerald Armstrong executed the settlement agreement on  
21 December 6, 1986, a material provision was the forum selection  
22 clause set forth in Paragraph 20. The Hon. Paul G. Breckenridge,  
23 Jr., presided over the trial of Scientology's complaint against  
24 Armstrong in Church of Scientology of California v. Armstrong, Los  
25 Angeles Superior Court, Case No. C 420 153 ("Armstrong I"), and  
26 was set to preside over the trial of Armstrong's Cross-Complaint  
27 against Scientology. Based upon his experience at trial as a  
28 defendant with Judge Breckenridge, Armstrong believed that Court

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1 was sufficiently intelligent, educated regarding the nature and  
2 practices of Scientology, and fair, to be able to manage what  
3 Armstrong was convinced would be post-settlement disputes  
4 regarding the scope and effect of the settlement agreement.  
5 Declaration of Gerald Armstrong (Armstrong Decl.), Exhibit 2 at ¶¶  
6 4, 5 . Thus, the assurance of the protection of said Court <sup>1/</sup>  
7 which had treated him fairly was material to Mr. Armstrong's  
8 decision to settle. Id. at ¶. 5.

9       Scientology will claim that the Los Angeles Superior Court  
10 held that it does not have jurisdiction in this matter. This is  
11 not true. On December 23, 1991 Judge Geernaert made a narrow  
12 jurisdictional determination on the specific question whether  
13 without any type of evidentiary hearing he could enforce terms of  
14 the settlement agreement when that agreement had never been before  
15 the court, not to mention never having been incorporated into an  
16 order or judgment. <sup>2/</sup> He denied Scientology's motion that he do

17 \_\_\_\_\_  
18       <sup>1</sup> Since Judge Breckenridge has retired, Hon. Bruce R.  
19 Geernaert has been "presented with Judge Breckenridge's function"  
20 of presiding over post-settlement matters between Defendant  
21 Armstrong and Scientology. Exhibit 1-A at 10:24-25.

22       <sup>2</sup> Judge Geernaert said that an evidentiary hearing was  
23 necessary because was there no order upon which he could act and  
24 because the "circumstances involved in entering into the  
25 agreement, the equitable concept of unclean hands, the public  
26 policy concerning any of the provisions sought to be enforced"  
27 required more from an "evidentiary standpoint." Exhibit 1-A at  
28 11:13-18, 15:18-24. He criticized the agreement as "very broad  
and unclear . . . [and] to read the whole agreement, you come up  
with a wonderment as to what was mutual about it . . . you also  
wonder to what extent offering assistance . . . would be a term  
that any court would put in its order." Id. 12:19-28. Judge  
Geernaert said the agreement was "so unclear . . . so ambiguous  
and . . . one-sided, . . . that it was entered into for the  
reasons he says were anything but voluntary" and thus merited a  
hearing. Id. at 22:3-23:5. He refused to act as Scientology's  
"rubber stamp," Id. at 17:6, and required a "judicial proceeding,  
not the one on the [video] tape." Id. at 13:9-10.



1 just that, making the common-sense determination that where there  
2 has been no order, there cannot be jurisdiction to enforce what is  
3 claimed to be a violation thereof.

4 The theory of this motion is that the settlement agreement  
5 contains a forum selection clause that was predicated upon  
6 Defendant Armstrong's valuation of, and his trust and belief in  
7 the fair judgment of, the trial judge Paul G. Breckenridge, Jr.,  
8 upon which Defendant Armstrong relied in order to justify the risk  
9 of further abuse by Scientology that to Armstrong the settlement  
10 represented. Armstrong Decl. AT ¶ 6.

#### 11 STATEMENT OF FACTS

12 Before fully addressing Armstrong's theory, it is necessary  
13 to put his case into accurate past and present perspective.

14 One reason for this is to address, in advance,  
15 misrepresentations of the record. For example, at page 19, lines  
16 4-16 of its Memorandum of Points and Authorities in Support of  
17 Plaintiff's Motion for Preliminary Injunction for Breach of  
18 Contract, plaintiff has asserted that

19 . . . on December 3, 1991, the [Scientology Organization]  
20 filed a motion in Los Angeles Superior Court for Enforcement  
21 of the Settlement Agreement . . . the motion failed only  
22 because the Court determined that it lacked jurisdiction,  
23 since the case itself had already been settled. With a new  
24 action before the Court, an injunction should and must issue  
25 to preserve the [Scientology Organization's] rights pending  
26 trial.

27 This is an incomplete, if not incorrect, statement of the  
28 facts generated during the course of the December 23, 1991 hearing  
in Armstrong I before the Hon. Bruce R. Geernaert.

Judge Geernaert simply held that, at least without a



1 hearing, <sup>3/</sup> he lacked the particular type of jurisdiction that  
2 Scientology asked him to assert: to enforce the draconian terms  
3 of settlement as though such terms had previously existed as an  
4 order of the court despite the fact that Scientology had never  
5 presented the agreement to the trial judge. Judge Geernaert found  
6 that at no time had there ever been a judgment or order  
7 incorporating the terms of settlement, and that there was no  
8 basis, e.g. no order, for him to enforce because the settlement  
9 agreement had never been presented to the court. See, Exhibit 1-A  
10 at 40:19-22, 41:17-20, 43:17-27, 45:12-16, 47:6-48:10, 49:5-7,  
11 51:17-52:25, 53:5-11. <sup>4/</sup>

12 Five years before Scientology's December 1991 effort to make  
13 Judge Geernaert enforce against Defendant ARMSTRONG the terms of  
14 an agreement that had never seen the inside of a courtroom, and  
15 after successfully defending Scientology's attack in Armstrong I  
16 for allegedly "stealing" documents belonging to L. Ron Hubbard,  
17 ARMSTRONG was poised to take to trial his Cross-Complaint for  
18 intentional infliction of emotional distress, fraud and invasion  
19 of privacy on January 17, 1987. Armstrong Decl. at ¶ 4.

20 The facts to be proved at said trial had already been  
21 partially sketched by Judge Breckenridge when on June 22, 1984, he

22 \_\_\_\_\_  
23 <sup>3</sup> Scientology attorney Michael L. Hertzberg argued that no  
24 hearing was required. Exhibit 1-A at 20:23-12.

25 <sup>4</sup> Indeed, Judge Breckenridge twice noted that the parties  
26 file the settlement agreement. Exhibit 1-I, Minute Orders of  
27 12/12/86 and 12/17/86. After ignoring those orders from Judge  
28 Breckenridge, Scientology asked Judge Geernaert to use the court's  
authority against ARMSTRONG, as though Judge Breckenridge had  
ordered ARMSTRONG to conform to the settlement agreement, when the  
essence and the terms of the settlement which had been withheld  
from the Court. Exhibit 1-C, Reporter's Transcript of  
Proceedings, Thursday, December 11, 1986.



1 filed his Memorandum of Intended Decision wherein he found:

2 After the within lawsuit was filed on August 2, 1982,  
3 Defendant Armstrong was the subject of harassment, including  
4 being followed and surveilled by individuals who admitted  
5 employment by Plaintiff; being assaulted by one of these  
6 individuals; being struck bodily by a car driven by one of  
7 these individuals; having two attempts made by said  
8 individuals apparently to involve Defendant Armstrong in a  
9 freeway automobile accident; having said individuals come  
10 onto Defendant Armstrong's property, spy in his windows,  
11 create disturbances, and upset his neighbors.

12 Appendix to Breckenridge Opinion at 14:22-15:3, Exhibit 1-B.

13 The disrespect, assault and abuse against ARMSTRONG as  
14 detailed by Judge Breckenridge was predicated upon Scientology's  
15 implementation of its notorious penchant for retribution,  
16 institutionalized as the infamous "Fair Game Policy." <sup>5/</sup>

17 At the time of settlement ARMSTRONG was convinced that Judge  
18 Breckenridge knew and understood the nature of Scientology's

19 \_\_\_\_\_  
20 <sup>5</sup> The Second District has determined that ARMSTRONG was  
21 subjected to Scientology's Fair Game Policy "which permits a  
22 suppressive person to be tricked, sued or lied to or destroyed ...  
23 or deprived of property or injured by any means by any  
24 Scientologist . . ." Church of Scientology v. Armstrong (1991)  
25 232 Cal.App.3d 1060, 1067, 283 Cal.Rptr. 917. See also, Church  
26 of Scientology v. Wollersheim (1989) 212 Cal.App.3d 872, 888-91,  
27 260 Cal.Rptr. 331; Allard v. Church of Scientology (1976) 58  
28 Cal.App.3d 439, 443, n.1, 129 Cal.Rptr. 797; United States v.  
Kattar (1st Cir.1988) 840 F.2d 118, 125; Van Shaick v. Church of  
Scientology (U.S.D.C. Mass.1982) 535 F.Supp. 1125, 1131 n.4;  
Christoffersen v. Church of Scientology (1982) 57 Ore.App. 203,  
644 P.2d 577, 590-92; Church of Scientology v. Commissioner of  
Internal Revenue (1984) 83 T.C. 381, 411-12, aff'd, 823 F.2d 1310  
(9th Cir. 1987). No one, not even judges, is beyond the scope of  
"Fair Game." Declaration of Ford Greene (Greene Decl.), Exhibit  
1-Q. American Lawyer, 12/80, "Scientology's War Against the  
Judges."

A corollary to the Fair Game Policy is Scientology's Policy  
Letter of 25 February 1966 entitled "Attacks of Scientology."  
Therein, the policy is laid out to "[s]pot who is attacking us"  
and to "[s]tart feeding lurid, blood, sex, crime actual evidence  
on the attacker to the press." Armstrong Decl. Exhibit 2-B. It  
is the implementation of Fair Game and Attack the Attacker that  
has spurred the allegations underlying Scientology's claims in the  
instant lawsuit. Armstrong Decl. at ¶ 6.



1 "religious" practices, unlike many courts which are bombarded by  
2 the outrageous paper burden and science fiction claims built into  
3 Scientology litigation. Armstrong Decl. at ¶ 5. ARMSTRONG  
4 trusted Judge Breckenridge's judgment regarding the tactics and  
5 strategies of the Scientology Organization and felt relatively  
6 comfortable in his hands. Id. at ¶ 10.

7 Thus, as one of the legitimate objects of settlement (and one  
8 of two in Armstrong's favor), <sup>6</sup>/ the settlement agreement  
9 provisions provided a forum selection clause in the event any  
10 litigation regarding the settlement was generated in the future.

11 On December 11, 1986, Armstrong's attorney, Michael J. Flynn  
12 and Scientology attorneys John G. Peterson, Michael Lee Hertzberg  
13 and Lawrence E. Heller appeared, ex parte, before Judge  
14 Breckenridge and announced that they had settled Cross-Complainant  
15 Armstrong's Cross-Complaint in Armstrong I. Exhibit 1-C,  
16 Reporter's Transcript of Proceedings, Thursday, December 11, 1986.  
17 At that time said attorneys submitted a Joint Stipulation of  
18 Dismissal, Exhibit 1-D; an Order Dismissing Action With  
19 Prejudice, Exhibit 1-E; a Stipulation for Return of Sealed  
20 Materials and Exhibits, Exhibit 1-F; Order for Return of  
21 Exhibits and Sealed Documents, 1-G; and a Stipulated Sealing

22 \_\_\_\_\_  
23 <sup>6</sup> As ARMSTRONG will argue in his opposition to injunctive  
24 relief, the provisions Scientology seeks to enforce against him  
25 are severable from the contract as void and unenforceable  
26 violations of public policy. Civil Code § 1599. Not the entire  
27 object of the contract, however, is necessarily illegitimate. It  
28 is ARMSTRONG's position that should any part of the agreement  
survive its pervasive illegality, the dismissal of his cross-  
complaint at the threshold of trial in Armstrong I was supported  
by the promise set forth in the forum selection clause that all  
further proceedings, if any, would be held before the judge who  
had treated him fairly.



1 Order, Exhibit 1-H. The filing of said documents was spelled out  
2 in the Court's minute order dated December 11, 1986. Exhibit 1-I.

3 On December 12, 1986, Judge Breckenridge through his clerk,  
4 noted that the settlement agreement referred to in the Joint  
5 Stipulation of Dismissal and Order Dismissing Action had not been  
6 filed. Exhibit 1-J. The settlement agreement never was filed  
7 with the Los Angeles Court because according to Scientology's  
8 attorney, it was "irrelevant." Exhibit 1-A at 28:24-26.

9 Notwithstanding the fact that Scientology had failed comply  
10 with the Order Dismissing Action it provided to Judge Breckenridge  
11 and file the agreement, it brought a motion to enforce that  
12 agreement. Exhibit 1-K. Armstrong opposed that motion, Exhibit  
13 1-L, and Scientology replied. Exhibit 1-M. After Armstrong filed  
14 a supplemental memorandum on the issue of jurisdiction, Exhibit  
15 1-N, Scientology filed its additional reply. Exhibit 1-O.

16 **ARGUMENT**

17 **I. PARAGRAPH 20 IS A FORUM SELECTION CLAUSE**  
18 **WHEREBY THE PARTIES CONTRACTED THAT LOS ANGELES**  
19 **SUPERIOR COURT WOULD BE THE FORUM FOR ALL ACTIONS**  
20 **AND PROCEEDINGS WHICH AROSE FROM THE SETTLEMENT AGREEMENT.**

21 Paragraph 20 of the settlement agreement states in full:

22 Notwithstanding the dismissal of the lawsuit pursuant to  
23 Paragraph 4 of this Agreement, the parties hereto agree that  
24 the Los Angeles Superior Court shall retain jurisdiction to  
25 enforce the terms of this Agreement. This Agreement may be  
26 enforced by any legal or equitable remedy, including but not  
27 limited to injunctive relief or declaratory judgment where  
28 appropriate. In the event that any party to this Agreement  
institutes any action to preserve, to protect or to enforce  
any right or benefit created hereunder, the prevailing party  
in any such action shall be entitled to the costs of suit and  
reasonable attorney's fees.

Exhibit 2-C.

The Code of Civil Procedure states that the two existing



1 classes of judicial remedies are "actions" and "special  
2 proceedings." C.C.P. § 21. An "action" can be civil or  
3 criminal, C.C.P. § 24, and is "an ordinary proceeding in a court  
4 of justice by which one party prosecutes another for the  
5 declaration, enforcement, or protection of a right, the redress or  
6 prevention of a wrong, or the punishment of a public offense.  
7 C.C.P. § 22. Thus, based upon the express terms of Paragraph 20  
8 in conjunction with the foregoing definitions, it is clear that  
9 said paragraph is a forum selection clause.

10 Although historically not favored by American courts, M/S  
11 Bremen v. Zapata Off-Shore Co. (1972) 407 U.S. 1, 9, 32 L.Ed.2d  
12 513, it is settled that parties to a contract may agree in advance  
13 to submit to the jurisdiction of a given court and absent some  
14 "compelling and countervailing reason it should be honored by the  
15 parties and enforced by the courts." Id. 407 U.S. at 11. Thus,  
16 for almost 20 years California has upheld the validity of such  
17 clauses.

18 . . . we are in accord with the modern trend which favors  
19 enforceability of such forum selection clauses. [Citations.]  
20 . . . we conclude that forum selection clauses are valid and  
21 may be given effect, in the court's discretion and in the  
22 absence of a showing that enforcement of such a clause would  
23 be unreasonable.

24 Smith, Valentino & Smith, Inc. v. Superior Court of Los Angeles  
25 County (1976) 17 Cal.3d 491, 495-96, 131 Cal.Rptr. 374; Lifeco  
26 Services Corp. v. Superior Court (1990) 222 Cal.App.3d 331, 334-  
27 35, 271 Cal.Rptr. 385.

28 Code of Civil Procedure section 418.10 entitles a defendant  
on or before the last day of his time to plead to serve and file a  
motion to dismiss or stay the action on the ground of inconvenient



1 forum. An inconvenient forum holding may be obtained when the  
2 court finds it in the interest of substantial justice to do so.  
3 C.C.P. § 410.30. A contractual forum selection claim requires a  
4 court to decline jurisdiction "on the ground that the plaintiff  
5 has unfairly or unreasonably invoked the jurisdiction of an  
6 inconvenient forum." Furda v. Superior Court (Serological Biopsy)  
7 (1984) 161 Cal.App.3d 418, 424-25, 207 Cal.Rptr. 646.

8 As a further legal basis for Defendant Armstrong's motion,  
9 Code of Civil Procedure section 396b (a) provides that at on or  
10 before the time to respond to a Complaint, the Defendant may file  
11 a noticed motion to transfer the action or proceeding to the  
12 proper court. Upon hearing the motion, the court shall, if it  
13 appears that the action or proceeding was not commenced in the  
14 proper court, order the action transferred to the proper court.  
15 Id.

16 The instant case is not in the proper court. Rather than  
17 abide by the forum selection clause of the very agreement that  
18 Scientology asks the Court to enforce against Defendant Armstrong,  
19 Scientology disregards provisions of the agreement when to do so  
20 suits its forum shopping purposes, and after it has accomplished  
21 an end-run around the Los Angeles Superior Court, the Court which  
22 best knows the case, it seeks to enforce other provisions of the  
23 agreement in a jurisdiction which knows virtually nothing of the  
24 long history of antecedent litigation. Based upon such expedient  
25 conduct, Scientology should be estopped from asserting any  
26 position contrary that which the forum selection clause requires.  
27 Scientology is afraid of the Court which knows it best. Instead,  
28 it has come to Marin County to seek relief it may have a lesser



1 chance of obtaining in Los Angeles. In Marin County, Scientology  
2 also accomplished the goal of escaping from the potential further  
3 review of the appellate court that is familiar with the appeal of  
4 Armstrong I. Church of Scientology v. Armstrong, supra, 232  
5 Cal.App.3d 1060.

6 In order to be able to fully understand the gravity of the  
7 arguments in this case why certain contractual provisions should  
8 be severed and declared unenforceable as violative of public  
9 policy, it is necessary for the full available record of Armstrong  
10 I to be available to the Court in order for the Court to be able  
11 to review what Scientology is trying to suppress. That file is in  
12 Los Angeles, not in Marin County. That is why Scientology has  
13 disregarded the forum selection clause and brought the instant  
14 action in this Court.

15 **II. REQUEST FOR JUDICIAL NOTICE**

16 Pursuant to Evidence Code section 451, Defendant Armstrong  
17 requests this Court to take judicial notice of the court's file in  
18 Church of Scientology of California v. Gerald Armstrong, Los  
19 Angeles Superior Court Case No. C 420 153. Copies of documents in  
20 that case are submitted herewith as Exhibits 1-A through 1-O. See  
21 Declaration of Ford Greene, Exhibit 1-A through 1-O.

22 **III. THE COURT SHOULD AWARD SANCTIONS**  
23 **AGAINST PLAINTIFF AND ITS ATTORNEYS**  
24 **FOR RESISTING THE INSTANT MOTION.**

25 Code of Civil procedure section 396b (b) provides the Court  
26 with authority to award reasonable expenses and attorney's fees in  
27 making the motion to transfer. In determining whether or not to  
28 make such an order, the Court must take into consideration (1)  
whether an offer to stipulate to change of venue was reasonably



1 made and rejected, and (2) whether the motion for transfer, or  
2 selection of venue, was made in good faith given the facts and law  
3 the party making the motion or selecting the venue knew or should  
4 have known. Ibid.


5 In this case, Armstrong's counsel made an offer, in writing,  
6 to stipulate to the transfer of the action to Los Angeles Superior  
7 Court. Exhibit 1-Q. No response has been received to said offer.

8 **CONCLUSION**

9 Since Scientology is in Marin County seeking to enforce an  
10 agreement which, by the express terms of Paragraph 20 thereof,  
11 requires such an enforcement effort to be prosecuted in the  
12 Superior Court of Los Angeles, this Court should either dismiss  
13 the action outright, stay the same, or transfer it to Los Angeles  
14 Superior Court.

15 DATED: March 5, 1992

HUB LAW OFFICES

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17 By: 

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Attorney for Defendant  
GERALD ARMSTRONG

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